IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 2041 OF 1998.

Ramesh Hassanand Nichani
of Bombay Indian Inhabitant
the Karta and Manager of M/s.
Ramesh Hassanand Nichani (HUF)
carrying on business at 501,
Blue Diamond, Juhu Tara Road,
Santacruz (W), Bombay 400 049. ... Plaintiff.

Versus.

1. M/s.Replica Films
   a firm carrying on business
   at Mhatra Plaza, M.G.Road,
   Dhanukar Wadi, Kandivali
   West, Mumbai 400 067.

2. M/s.Adlabs Films Pvt.Ltd.,
   a company duly registered
   under the Companies Act of
   1956 and having its registered
   office at 35/38, Suren Road,
   Andheri (E), Mumbai 400 093. ... Defendants.

Shri Tushar Bhavsar i/by M/s.Ranjit & Co. for the Plaintiff.

None for the Defendants.

CORAM : ABHAY S.OKA, J.

DATED : 20th July, 2007.

ORAL JUDGMENT.:

1. The learned Counsel appearing for the Plaintiff has tendered on record an affidavit of evidence of Shri Ramesh Hassanand Nichani, the Plaintiff. He has also tendered on record the original documents along with a compilation. The affidavit is taken on record and marked "X" for identification. The compilation of documents is taken on record and marked "Y" (Collectively) for identification.

2. According to the case of the Plaintiff the 1st Defendant had produced a film in Hindi titled as "Dwand-Yudh". On 29th November 1994 there was an agreement executed by and between the Plaintiff and the 1st Defendant. The Plaintiff agreed to lend and advance a sum of Rs.10 lakhs to the 1st Defendant upon security of the said motion picture. The Plaintiff accordingly advanced a sum of Rs.5 lakhs for which the 1st Defendant executed a bill of exchange. The balance amount of Rs.5 lakhs was not advanced. One Ravi Malik was the guarantor for repayment of the said amount. The said Ravi Malik has died and no action is taken against his heirs as the names of the heirs are not known to the Plaintiff. A notice was issued to the 1st Defendant on 11th November 1996 calling upon him to re-pay the said sum of Rs.5 lakhs together with discount commission at the rate of 20.4% on or before 20th May 1995. As the amount was not paid, the suit has been filed for recovery of the amount.

3. By his affidavit, the Plaintiff has proved his claim in the suit. The Plaintiff has also proved the original documents which are tendered along with the affidavit.

4. The substantive prayer is for recovery of the amount due and payable till the date of filing of the

suit which includes a sum of Rs.5 lakhs together with the discount commission at the rate of 20.4% from 9th December 1994 to 22nd April 1998. The Plaintiff has prayed for discount commission at the rate of 20.4% from the date of institution of the suit. The said amount cannot be granted. However, the Plaintiff will be entitled to the interest on the suit claim at the rate of 9% per annum.

5. There is no written statement filed by the Defendant and there is no contest. In view of the evidence led by the Plaintiff, the suit deserves to be decreed in terms of prayer clauses (a) to (d).

6. Accordingly the suit is partly decreed in terms of prayer clauses (a) to (d) with a modification that the Plaintiff will not be entitled to the discount commission at the rate of 20.4% per annum on the principal amount of Rs.5 lakhs. However, the Plaintiff will be entitled to interest at the rate of 9% per annum on the principal amount of Rs.5 lakhs from the date of institution of the suit till the realisation or payment. The Plaintiff will also be entitled to the costs of the suit from the Defendants.

7. Certified copy is expedited.

Judge.